



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



388258

REPLY TO THE ATTENTION OF:

April 16, 2002

C-14J

Mr. Kitt C. Cooper  
35 East Livingston Avenue  
Columbus, Ohio 43215

Re: Cost Recovery for funds expended at  
Jefferson Processing Superfund Site #B5C2

Dear Kitt:

I am in receipt of your letter dated April 5, 2002. At the outset, let me say that the United States Environmental Protection Agency (U.S. EPA) has patiently waited for a response to its demand letter dated September 27, 2001. The goal in mind was to see if the parties can find a way to settle the costs incurred by the U.S. EPA, totaling \$654,658.28<sup>1</sup>, for the cleanup of PCBs at the Jefferson Processing Superfund Site (Site). It was my hope that given the ample time to review this matter (roughly six months) and confer with your client/s, significant strides would have been made towards resolving this matter. I am sure it will come as no surprise that your client/s' \$40,000 offer is nowhere in the ballpark in which U.S. EPA is willing to bring this matter to a close. If we are to continue down this path, I believe that settlement negotiations will not be fruitful. I am hopeful that with this letter, which addresses current operator liability, we can work together to move in a positive direction towards settlement within the next few months.

As we have discussed during numerous phone calls, clearly your client/s have been the operator of the site since Ms. Glorious purchased the property in 1994<sup>2</sup>. The issue that you have raised is whether the government can hold the operator responsible for cleanup costs if the operations he

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<sup>1</sup> As I have indicated previously, these costs represent costs accrued through May 31, 2001, and do not take into account any subsequent invoices we may have received from our contractors in relation to the clean up of this matter, nor do they include interest that has been accruing since the time of our demand.

<sup>2</sup> One might also raise questions as to the circumstances under which the property was purchased by Ms. Glorious, thereby raising questions regarding who really was the owner of the Site since 1994.

was conducting were not specifically related to the pollution that drove the cost of the cleanup<sup>3</sup>.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(a) identifies four classes of persons that are liable for the response costs. CERCLA 42 U.S.C. § 9607(a)(1) applies to owners and operators of a facility while CERCLA 42 U.S.C. § 9607(a)(2) applies to any person who at the time of disposal of any hazardous substance owned or operated any facility at which hazardous substances were disposed. The statute on its face, the case law and the EPA guidance and practice all make a clear distinction between the class of owners and operators that fall under CERCLA 42 U.S.C. § 9607(a)(1) and CERCLA 42 U.S.C. § 9607(a)(2). Subsection (a)(1) imposes strict liability on **current owners and operators**. See U.S. v. Cordova Company of Michigan, 113 F. 3d 572,576 (6th Cir. 1997) and Crofton Ventures Limited Partnership v. G & H Partnership, 258 F. 3d 292, 296 (4<sup>th</sup> Cir. 2001), to name just a few cases that touch on this well grounded principle. Therefore, the government does not need to show that a current owner or operator conducted operations specifically related to the pollution in question. The mere fact that they were the current owner or operator at the time the costs were incurred by the government is sufficient to impose liability for costs of the clean up. Subsection (a)(2) on the other hand imposes liability on any **previous owner or operator** who at the time of disposal of any hazardous substance owned or operated any facility. United States vs. Best Foods 524 U.S. 51 (1998) addressed previous owners and operators under CERCLA 42 U.S.C. § 9607(a)(2), not current owners and operators under CERCLA 42 U.S.C. § 9607(a)(1). Therefore, the holding in this Supreme Court case does not apply to your client/s.

Please review you position and get back to me by April 23, 2002. As I have previously indicated, the U.S. EPA will work with Mr. Smith as long as a good faith effort to settle this matter is evident on the part of Mr. Smith. I look forward to a counter offer that will allow me to discuss the possibility of resolution in this matter.

Sincerely,



Nidhi K. O'Meara

Associate Regional Counsel

cc: Deborah Haidar

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<sup>3</sup> You should note that U.S. EPA is not convinced that this was indeed the case.

